

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2124.04
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: May 5, 2004
DATE OF REPORT: June 4, 2004
REQUEST FOR RECONSIDERATION: yes/revised - July 2, 2004
DATE OF CLOSURE: September 22, 2004

COMPLAINT ISSUES:

Whether the Northwestern School Corporation and the Kokomo Area Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to:

- a. provide the required amount of special education and related services as specified in the least restrictive environment (LRE) section of the student's IEPs dated August 13, 2003, November 4 and 19, 2003, and March 8, 2004;
- b. provide the student with a laptop computer; and
- c. ensure that the student sits at the front of the classroom.

511 IAC 7-27-7(b) by failing to ensure the student's teacher of record (TOR) monitors the implementation of the student's IEP, and provides technical assistance and consultation to the student's general education teachers.

During the course of this investigation, a new issue was discovered, specifically, whether the School violated:

511 IAC 7-27-4(c) by failing to utilize the case conference committee (CCC) to specifically address whether to:

- a. convene the case conference committee (CCC) every nine week period;
- b. look into physical education adaptations; and
- c. investigate other assistive technology options for the student.

FINDINGS OF FACT:

1. The Student is eleven years old and attends the local elementary school (the School) and is eligible for special education and related services as a student with a learning disability.
2. The Student's IEPs, dated August 13, and November 4, 2003, indicate that the Student's placement determination and LRE is in the regular class, meaning special education and related services will be provided outside of the regular general education classroom for less than 21% of the school day. The IEP also indicates that the Student will be in the general education classroom 84% of the school day and 16% in a special education setting. These percentages, although they may not be exact, are determined by comparing how much special education services are provided outside of the general education classroom setting to the total number of hours in a school day. Ultimately, these percentages are not a legal requirement/component of an IEP and are more related to the purposes of federal child count procedures and data collection per Article 7, Rule 31. In this case, based on the

August 13, and November 4, 2003 IEPs, the Student was pulled out for occupational therapy (OT) services and because the Student went to the learning disability resource room for Math or English/Language Arts. The Student's IEP, dated November 19, 2003, indicates that the Student's LRE was changed to 98% in the general education classroom and 2% special education because the case conference committee (CCC) decided that the Student should remain in the general education classroom for Math/English and the only pull-out time was for continued OT. Finally, the Student's IEP, dated March 8, 2004, indicates that the CCC changed the Student's LRE to 99% general education classroom to reflect the decision that the Student's OT services would change to consultation one time per month. The above-mentioned IEPs were agreed to by the Student's parents as indicated by their signatures. The Complainant does not specifically allege that the required services were not provided, only that there is some question as to whether the percentages in the LRE sections truly match the amount of special education services the Student was receiving.

3. There is no dispute as to whether the Student was provided with a laptop computer or allowed to sit at the front of the classroom. The allegations stem from a disagreement as to when the CCC agreed to initiate these steps. The Student's IEP, dated November 4, 2003, indicates, in the CCC Report notes, that the Student is to be seated in the front of the room and have use of a laptop computer in the classroom. The Complainant alleges that this was agreed to at the August 13, 2003 CCC meeting thus causing a 61 day delay in implementing this aspect of the Student's special education. However, no documentation exists to indicate that this was agreed to at the August 13, 2003 CCC meeting.
4. The Student's IEP, dated August 13, 2003, in the CCC Report, contains notes regarding three other areas of contention: whether to convene CCC meetings every nine week grading period throughout the 2003-2004 school year, whether the school will convene a CCC meeting with the Student's physical education teacher to discuss modifications/adaptations that may be needed, and whether the School will consult with the assistive technology team to see if other technology is available for the Student. There is no dispute that these topics were indeed discussed at the CCC meeting. However, there is nothing in the CCC Report that indicates whether these things were agreed to and, if so, when they would be accomplished and by whom. CCC meetings were convened at periods relatively close to every nine weeks, but not in correspondence with the School's nine week grading periods which is the apparent intent. Furthermore, the School has failed to provide documentation showing whether any of the other CCC discussion topics have been acted upon during the 2003-2004 school year.
5. The School submitted the requisite documentation to show compliance with 511 IAC 7-27-2(b) upon requesting a reconsideration of this complaint report. As is already indicated in Finding of Fact #4, the CCC Report notes are ambiguous as to what the parents and the School have agreed to do. In addition, the accommodations section of the all the above-mentioned IEPs simply contains a list of accommodations that do not describe who is responsible for their implementation, when they are to be implemented, for how long and with what frequency. Documentation indicates efforts made intermittently throughout the school year to keep communication open between the TOR and other school personnel working with the Student regarding the Student's IEP, with special emphasis on issues involving assistive technology. It is still unclear as to how extensive a role the Student's TOR has played in keeping the Student's general education teacher and other school personnel who work with the Student informed of what the IEP requires. However, the Complainant has made it abundantly clear that this allegation involving the TOR is strictly about matters concerning the TOR's overall professionalism with regard to implementing the Student's IEP. Issues involving the professionalism of school personnel or their methods of educating students fall outside the scope of a complaint investigation.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the School has not failed to implement the Student's IEP. Specifically, the School:
 - a. did provide the required amount of special education and related services as specified in the LRE section of the Student's IEPs dated August 13, 2003, November 4 and 19, 2003, and March 8, 2004. Therefore a violation of 511 IAC 7-27-7(a) is not found with regard to the general provision of special education;
 - b. did provide the Student with a laptop computer as agreed to in the Student's IEP. Therefore, a violation of 7-27-7(a) is not found with regard to the provision of a laptop; and
 - c. did ensure that the Student sits at the front of the classroom. Therefore, a violation of 511 IAC 7-27-7(a) is not found with regard to classroom seating.
2. Finding of Fact #5 indicates that the School has demonstrated at least minimal attempts to monitor the implementation of the student's IEP, including the provision of technical assistance to the Student's general education teachers. Whether the TOR is doing enough or acting in a professional manner falls outside the scope of a complaint investigation. Therefore, a violation of 511 IAC 7-27-7(b) is not found.
3. Finding of Fact #4 indicates that the School failed to utilize the CCC to address specific concerns of the parent regarding how often the CCC shall meet, whether to provide physical education adaptations, and whether to implement new assistive technology. Where ambiguities exist in an IEP, the ambiguity will be construed against the public agency that is responsible for its development and implementation. IEPs and CCC Reports must have sufficient clarity so that both the parent and the school staff know what services a student is to receive, from whom, and whatever other resources will be employed in this endeavor.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Northwestern School Corporation and the Kokomo Area Special Education Cooperative shall:

1. Convene a CCC meeting to review and revise the Student's IEP and to discuss whether and to what extent physical education adaptations will be necessary, the CCC will meet every nine week grading period, and whether other types of assistive technology will be provided. Also, the CCC shall clearly define the agreed upon accommodations for the Student. A copy of the CCC Report/IEP shall be sent to the Division no later than September 17, 2004.